



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 17, 2010

CBCA 1825-RELO

In the Matter of DAVID R. WILLIAMSON

David R. Williamson, Chula Vista, CA, Claimant.

Lani Gordon, Office of the General Counsel, Space and Naval Warfare Systems Command, Department of the Navy, San Diego, CA, appearing for Department of the Navy.

GOODMAN, Board Judge.

Background

Claimant, David R. Williamson, is a civilian employee of the Department of Defense. He accomplished a permanent change of station (PCS) transfer from his duty station in Los Angeles, California, to San Diego, California. His travel orders authorized reimbursement of real estate transaction expenses. The agency denied reimbursement of certain expenses incurred for the purchase of a residence at the new duty station - for a fee charged by BancServ, Inc. (\$145), a fee for the drafting of a special power of attorney (\$55), and a wire transfer fee (\$25). Claimant has asked this Board to review the agency's denial of reimbursement of these expenses.

Discussion

BancServ, Inc. Fees

Title transfer companies routinely include among their charges a fee for courier delivery of documents when persons are not able to be physically present at settlement on a residence. A fee paid for delivery of documents is reimbursable if the fee meets a two-part test: The fee must have been incurred for services procured by the transferred employee or

someone working with him (rather than the lender, since fees paid to a lender are considered part of a non-reimbursable finance charge), and the services must have been necessary for the transfer of the residence (rather than having been secured merely for reasons of personal preference). In *Jack E. Hudson*, GSBCA 16053-RELO, 03-2 BCA ¶ 32,351; *Sandra L. Wilks*, GSBCA 15669-RELO, 02-2 BCA ¶ 31,962; *Larry W. Poole*, GSBCA 15730-RELO, 02-1 BCA ¶ 31,776; and *Daniel H. Coney*, GSBCA 15506-RELO, 01-2 BCA ¶ 31,610, one of our predecessor Boards allowed reimbursement for courier fees required for the completion of a residence transaction because the transferred employee did not return to his old duty station for settlement on the sale of his previous home.

The BancServ services used by claimant are similar to overnight courier delivery services, as the purpose was for rapid delivery of documents by scanning and subsequent e-mail delivery rather than physical delivery. Claimant explains as follows:

I signed the documents in San Diego at the Escrow office while my wife simultaneously signed a duplicate set in Los Angeles. [This was accomplished by the documents being] scanned and emailed to the BancServ agent, who printed them, presented them to my wife, had her sign, then he/she notarized them, scanned them, and emailed them to [the] Escrow [agent] in San Diego. These documents were not the same set as I signed, but were a duplicate set of documents, and were signed by both my wife and I simultaneously on closing day. Both sets put together contained both of our notarized signatures, and both sets were executed on closing day.

Thus, claimant was physically present at the settlement on the residence at the new duty station. His wife remained at the old duty station but was required to participate in the settlement. The BancServ services were therefore necessary for both claimant and his wife to participate at the settlement. The BancServ fee was not paid to the lender and was clearly for the purpose of transferring the residence to claimant and his wife. Claimant is entitled to reimbursement of the BancServ fee.

Special Power of Attorney Fees

The power of attorney was required because claimant's wife remained at the old duty station during the closing of the home at the new duty station and was therefore required to sign closing documents there rather than be present in San Diego. In *Kathy D. Peter*, GSBCA 16114-RELO, 04-1 BCA ¶ 32,424 (2003), a similar standard to that in the above-cited cases was applied to fees for preparation of powers of attorney and other work necessary to allow transfers of residences by transferred employees who are not able to be physically present at a settlement. The rule has been applied by this Board to deal with

situations when the unavailability of a spouse requires a power of attorney. *Hasan Pourtaheri*, CBCA 867-RELO, 08-1 BCA ¶ 33,727 (2007). In the current case claimant's spouse was not present, as it was necessary for her to remain at the old duty station. We find this fee reimbursable, as it was incurred by claimant and necessary for the transfer of the property.

Wire Transfer Fee

The agency correctly denied reimbursement of the wire transfer fee, as this fee is considered an unallowable finance charge under the Truth in Lending Act, 15 U.S.C. §1605(a) (2006) and Regulation Z and not reimbursable. 41 CFR 302-6.2(d)(2)(v) (2009); *Hudson*.

Decision

Claimant is entitled to reimbursement of the BancServ fee (\$145) and the fee for preparing the power of attorney (\$55). Claimant is not entitled to reimbursement of the wire transfer fee (\$25).

ALLAN H. GOODMAN
Board Judge